IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 15113 of 2007(Y)

PETITIONER:

K.V. JOHNY, S/O. VARGHESE,
KUMARAPPILLIL HOUSE, ALAKODE VILLAGE,
THODUPUZHA TALUK (WORKING AT THE IDUKKI DISTRICT CO-OPERATIVE BANK).

BY ADV. SRI.P.V.BABY

RESPONDENT:

MATHEW, S/O. THOMAS,
KURUVANTHANATH HOUSE, VALLAKKADAVU KARA,
KATTAPPANA VILLAGE, UDUMPANCHOLA TALUK.
(PRESENTLY AT KOLANI KARA, THODUPUZHA).

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF JUDGMENT IN O.S.NO.73/1993 DTD. 31/01/1996 OF THE SUB COURT, KATTAPPANA.

EXT.P2: COPY OF DECREE IN O.S.NO.73/1993 DTD. 31/01/1996 OF THE SUB COURT, KATTAPPANA.

EXT.P3: COPY OF ORDER DTD.11/12/1996 IN C.M.P.NO.5096/96 IN A.S.NO. 851/1996 OF THIS HON'BLE COURT.

EXT.P4: COPY OF OBJECTION DTD. 5/10/2005 FILED BY THE PETITIONER IN EP 34/05 IN O.S.NO.73/1993 ON THE FILE OF THE SUB COURT, KATTAPPANA.

EXT.P5: COPY OF E.A.NO.203/05 IN E.P.34/05 DTD. 25/10/2005 FILED BY THE RESPONDENT BEFORE THE SUB COURT, KATTAPPANA.

EXT.P6: COPY OF OBJECTION DTD. 2/12/2005 FILED BY THE PETITIONER IN EXT.P5.

EXT.P7: COPY OF RULE 37 NOTICE IN E.P.34/05 FILED BY THE RESPONDENT BEFORE THE SUB COURT, KATTAPPANA.

EXT.P8: COPY OF OBJECTON DTD. 10/01/2006 IN EXT.P7 FILED BY THE PETITIONER.

EXT.P9: COPY OF APPLICATION FOR REVIEW ALONG WITH AFFIDAVIT DTD. 12/01/2006 FILED BY THE PETITIONER IN E.P.34/05 IN O.S.73/1993 BEFORE THE SUB COURT, KATTAPPANA.

EXT.P10: COPY OF APPLICATION FOR ADVANCE THE CASE ALONG WITH AFFIDAVIT DTD. 12/01/2006 FILED BY THE PETITIONER IN E.P.34/05 IN O.S.NO.73/1993 BEFORE THE SUB COURT, KATTAPPANA.

EXT.P11: COPY OF JUDGMENT IN WP(C) NO.2550 OF 2006 DTD. 13/02/2006 OF THIS HON'BLE COURT.

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EXT.P12: COPY OF ORDER DTD. 6/06/2006 IN E.P.NO.34/2005 IN O.S.NO.73/1993 ON THE FILE OF THE SUB COURT, KATTAPPANA.

EXT.P13: COPY OF JUDGMENT IN WP(C) NO.16132 OF 2006 DTD. 20/12/2006 OF THIS HON'BLE COURT.

EXT.P14: COPY OF PETITION ALONG WITH AFFIDAVIT DTD. 26/03/2007 FILED BY THE PETITIONER IN E.P.NO.34/2005 IN OS.NO.73/1993 ON THE FILE OF THE SUB COURT, KATTAPPANA.

EXT.P15: COPY OF ORDER DTD. 26/03/2007 IN E.A.100/2007 IN E.P.NO. 34/2005 IN O.S.NO.73/1993 ON THE FILE OF THE SUB COURT, KATTAPPANA.

EXT.P16: COPY OF PETITION ALONG WITH AFFIDAVIT DTD. 27/03/2007 FILED BY THE PETITIONER IN E.P.NO.34/2005 IN O.S.NO.73/1993 ON THE FILE OF THE SUB COURT, KATTAPPANA.

EXT.P17: COPY OF ORDER DTD. 11/04/2007 IN E.P.NO.34/2005 IN O.S. NO.73/1993 ON THE FILE OF THE SUB COURT, KATTAPPANA.

/TRUE COPY/

P.A. TO JUDGE

KSS

M.N. KRISHNAN, J.

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W.P.C. NO. 15113 OF 2007

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Dated this the 24th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside Ext.P17 order passed by the Subordinate Judge, Kattappana. The learned Subordinate Judge in execution of the decree in O.S.73/93 found that the judgment debtor has got sufficient means to pay and therefore ordered detention of him in civil prison. The Court had entered into a finding that on a perusal of Ext.A1 it is seen that the judgment debtor has been given a compensation of Rs.67,229/- on 14.5.05 and another Rs.90,000/- on 20.10.05 and therefore that itself would negative the contention of no means. The learned counsel for the writ petitioner submits that he was a person who was dismissed from service for a fixed period of 13 years and reinstatement was done only subsequently and he had much liabilities, so he had utilized that money for the purpose of discharging those liabilities and that he was not having any means to pay the amount. In order to establish

the same he filed an application Ext.P16 whereby he requested the Court to grant him permission to produce documents to substantiate the said contention. I am told that unfortunately the Court below did not consider that application and proceeded to issue arrest warrant against him. When a person submits that he has no sufficient means to pay and wants to explain the situation how he had dealt with the money that has come to his hand etc. are all facts that have to be considered by the Court before sending him to a civil prison because it affects his right to liberty. Therefore, I think the order under challenge is liable to be set aside and I do so. The matter is remitted back to the Court below with a direction to the Sub Court to permit the writ petitioner to produce documents to substantiate his contention and adduce both oral and documentary evidence. Needless to say, if the decree holder wants to substantiate his contention regarding the means he may also be permitted to adduce evidence.

2. Though respondent is served in this case, no appearance is there and therefore the Court may intimate the decree holder about the remitting back of the case and then proceed in accordance with law.

3. The writ petitioner is directed to appear before the Court below on 23.8.2007 and further date to be fixed by the Court after notice to the decree holder's counsel.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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